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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,113	08/06/2001	Shane D. Wolf	01.39US-AVEDA	9546

7590                  08/20/2002

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EXAMINER
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MANAHAN, TODD E

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 08/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. <b>09/923,113</b>	Applicant(s) <b>Wolf</b>
	Examiner <b>Todd E. Manahan</b>	Art Unit <b>3732</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)  Responsive to communication(s) filed on 29 Jul 2002

2a)  This action is FINAL.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

4)  Claim(s) 1-24 is/are pending in the application.

4a) Of the above, claim(s) 11 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-10 and 12-24 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.

2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)

4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

5)  Notice of Informal Patent Application (PTO-152)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). 5

6)  Other: \_\_\_\_\_

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**DETAILED ACTION**

***Election/Restriction***

This application contains claims directed to the following patentably distinct species of the claimed invention:

Figure 5

Figure 6

Figure 7

Figure 8

Figure 9

Figure 10

Figure 11

Figure 12.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-10 and 13 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

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Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant's election with traverse of Figure 8, shears, in Paper No. 8 is acknowledged. The traversal is on the ground(s) that the examiner has not met the requirements of MPEP 808, namely why the inventions are distinct and reasons for insisting upon restriction between them. This is not found persuasive. Each of figures 5-12 are clearly distinct inventions, i.e., the straight razor of figure 5 is distinct invention from the curling iron of figure 6. With distinct species, it is not necessary to show separate status in the art or separate classification (see MPEP 808.01 (a) and MPEP 809.02(a) and MPEP 803.02).

The requirement is still deemed proper and is therefore made FINAL.

Claim 11 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 8.

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***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, and 12-15 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Tindall (U.S. Patent No. 970,406).

Tindall discloses a pair of scissors comprising a head region, a handle region comprising finger loops 6,7 and deformable grips 12 located within each loop. Each grip includes a deformable outer surface 13 an inner surface and a chamber therebetween. Each grip further may include a groove 14 that receives a portion of the inner diameter of each loop.

Claims 1-10 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by McCall et al. (U.S. Patent No. 5,000,599 cited by applicant).

McCall et al disclose a tool comprising a head region 20, a handle region having a stem 26, and a deformable grip 16 having the stem received therein. The grip comprises a deformable outer surface 28 that surrounds an inner layer of viscous medium 30 (figure 3) or alternatively an outer layer 34, and inner layer 38 connected by radially oriented webs 36 defining chambers having viscous medium therein and having vents 42 to permit passage of viscous

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medium between the chambers (figure 7). The viscous medium may be a putty such as vinyl elastomer or silicone-based putty (col. 4, lines 35-37) or a room temperature curable substance (col. 4, lines 52-62).

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Racodon (U.S. Patent No. 5,848,453).

Claims 1, 2, and 13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lo (U.S. Patent No. 4,837,892).

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by D'Haem et al. (U.S. Patent No. 4,044,625).

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-10 and 16-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tindall in view of McCall et al.

Tindall discloses the invention essentially as claimed except for the viscous material. McCall discloses a similar deformable grip having a viscous material disposed therein so that the

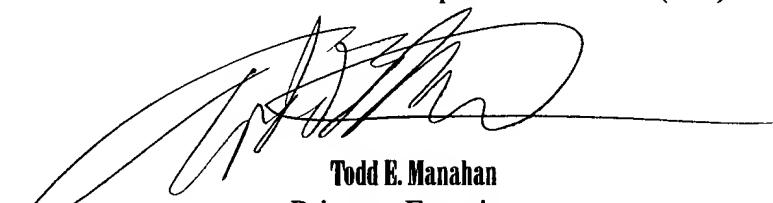
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grip will deform to the anatomical contours of the individual user in a custom fit manner and retain the deformation for a substantial period of time, for example at least five seconds. It would have been obvious to one skilled in the art to fill the chambers of the grips of Tindall with a viscous medium as taught by McCall et al in order that the grip will deform to the anatomical contours of the individual user in a custom fit manner and retain the deformation for a substantial period of time, for example at least five seconds.

*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. .

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd E. Manahan whose telephone number is (703) 308-2695.



Todd E. Manahan  
Primary Examiner  
Art Unit 3732

T. E. Manahan  
August 15, 2002